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MOTION FOR LEAVE TO FILE

No. 1221-A

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1965

FRANK MARKARIAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

SUPPLEMENTARY PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FRANK MARKARIAN, *pro se*
636 Park Avenue
South Milwaukee,
Wisconsin 53172

HANNERSMITH-KORTMEYER CO. MILWAUKEE

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The Petitioner respectfully moves this Court for leave to file the annexed SUPPLEMENTARY PETITION for Writ of Certiorari under Section 1254(1) of Title 28 of the United States Code.

STATEMENT IN SUPPORT OF MOTION

For the sake of justice and nobility embodied and inherent in this instant case and in conformance with the magnanimity of this Court, the Petitioner seeks your understanding and indulgence to overlook lack of precise formality and to accede in the protraction of work occasioned by want of legal knowledge and training and experience of the Petitioner whose financial dearth compels him to represent self.

The Petitioner had some justification in his assumption that the Brief in Opposition would not be filed here because the Respondent offered no detailed opposition when the Petitioner sought rehearing before the Court of Appeals. Then, too, the Petitioner relied on the wisdom of the Respondent not to try to hinder a Supreme Court determination on this reviewable case.

Now that the issue is being contested at the very offset, it is important that this Court be adequately informed of all its essential elements. The situation now calls for amplification so that you can arrive at a fair and just decision.

The Supplementary Petition contains some vital points and pertinent cases not mentioned at all in the regular Petition. Here one or more pivotal points underscored and challenged were merely mentioned in the Petition for the sake of brevity that the Certiorari would be granted without challenge from the Respondent.

The decision of the Court of Appeals, like that of the Tax Court, is not in accordance with the tax statute of Section 152. It is in conflict with the true intent of the Law. It is an abuse of discretion. Contrary to soundly established policy and rule, it is too narrowly constructed

and interpreted for the benefit and convenience of the Respondent. In such cases, Writ of Certiorari ought to be granted as was done in *C.I.R. v. LoBue,* 351 U.S. 243, 246.

By granting permission to file the Supplementary Petition, you would *not* place the Respondent at a disadvantage because he still will have had twelve days to file his Brief in Opposition before the due date of May 16. (Both the Counsel of Respondent and the Solicitor General had copies of this Supplementary Petition in their hands on May 4, 1966.)

In view of recurring nature of the principal question, and in view of public need for its proper administration, it is well for the Supreme Court to determine the full scope and meaning of Section 152. Such a determination would harmonize with the following famous quotation:

> "Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great State University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the Truth can be found." (Board of Regents of 1894)

Wherefore, for the foregoing reasons, the Petitioner earnestly prays that an order be entered granting leave to file the annexed Supplementary Petition.

Respectfully submitted,

Frank Markarian

FRANK MARKARIAN, *pro se*

Dated as of May 4, 1966.

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Knowing how busy the Supreme Court of the United States is and having initially assumed that the Respondent would not oppose this Certiorari, the Petitioner prepared his Petition concisely. But now because it has become apparent that the Brief in Opposition would be filed, the Petitioner is deeply concerned and very zealous that the Supreme Court be better informed about more

of the basic factors related and inherent in this controversial case of wide application. Accordingly, he submits this SUPPLEMENTARY PETITION by enlarging and augmenting the REASONS FOR GRANTING THE WRIT.

Respondent and the two lower courts relied wholly on the *defective* and *erroneous* precedent set by the *Bartsch* case, 41 T.C. 883. This was explained point by point from Paragraph XIV to XLVI in the Brief of the Appellant.

Such a questionable precedent was derived from a case which had normal and ordinary factors. To stretch that decision thinly and ineffectively in an attempt to encompass this *Markarian* case, 42 T.C. 640 and 352 F. 2d 870, makes that precedent inapplicable and doubly fallacious, because the elements in this instant case are neither ordinary nor normal factors.

In both cases personal services were rendered. But that is not the deciding and pivotal point in distinguishing one case from the other. The essential point which makes the cases different and distinguishable from each other is the physical and mental condition of the dependent.

In the *Bartsch* case the dependent was becoming infirm due to aging—a natural and ordinary process. But in the *Markarian* case the dependent was chronically invalid both mentally and physically for many years. Another important point of difference was that the plight of the latter case was duly recognized and recorded by local health and judicial authorities.

The proof of disability in the "Invalid Test" is essential. Unless formally recognized at local level, a taxpayer may not be allowed the claimed exemption. Such a prac-

tice and procedure would be akin to supporting a foster child. A taxpayer who has provided the entire expense of supporting a child from an orphanage cannot claim that child as his dependent unless he had legally adopted said child.

The Respondent and the lower courts were *challenged* to point out wherein it was stated that personal services and household chores rendered were "necessary" in the *Bartsch* case. *They failed to do so,* but still persist erroneously in saying that services there were "necessary." *Nowhere in the syllabus nor in the opinion can anyone find the word "necessary" in the Bartsch case.* Please note this yourself.

In fact, by inference and by implication, personal services rendered there were treated lightly by the Tax Court. This is borne out by these offset passages:

> Taxpayer and her mother lived together in a home owned by the mother. Each performed household tasks commensurate with her physical capacities, p. 886.
>
> Do we balance our judgment of such "value" against the value of the personal satisfaction which the daughter in this case receives in giving such care, p. 886.
>
> The term "support" in the Code must mean something more than furnishing the ordinary kindness and helpfulness and the cooking and the cleaning and the dishwashing that one able member of a household furnishes another less able, p. 887.

On page 642 of the *Markarian* case the Tax Court admitted that "Our decision was *not* based on a determination of whether the services rendered to the taxpayer's mother in the *Mildred Bartsch* case were necessary. However, the inherent assumption from our opinion in that

case is that such services were sufficiently necessary to be considered as an element of support if the fair value thereof was otherwise properly to be considered a part of the support that the taxpayer furnished her mother."

There you have contradictory and illogical passages. The first part is a true statement. The latter portion is a misleading supposition because "services" were not considered to have been important and necessary enough for that particular type of dependent as to be regarded an element of support.

There are other misinterpretations of intent and facts as if deliberately designed to give substance and credulity to the opinion in the single-judge-panel of the Tax Court. Such a grievous misinterpretation was attached to the following offset paragraphs 53 and 54 of the Petitioner's Brief in Answer, p. 643:

> Mother is so peculiarly wrong—so mentally ill—that logic and reasons have little effect on her. She is so incommunicable and noncooperative that when she was confined to a hospital, the nurses were unable to improve her lot. They gave up. They suggested that we consign her to the county asylum. Had that been done, it would have been her death warrant in short time.
>
> Any question or innuendo directly or by inference that the Petitioner is helping his Mother so that he could claim her as his dependent is absolutely contrary to truth. I have no choice. Circumstances somewhat forces me. It is not filial obligation. It is more for moral reasons. The services I rendered for Mother would not be done for another person though I were paid hundred times more than I could earn from a regular employment.

The Petitioner is perplexed beyond his comprehension how any person, let alone a division of the 1964 Tax

Court could be so illogical as to say: "The import of these statements is that petitioner did gain some type of personal satisfaction from the services he rendered for his mother." Such a connotation is fallacious and uncalled-for in the light of all actual facts and conditions. The opposite is true. All the documents—all the record —of the Petitioner bear and sustain this statement of his.

The Appeals Court attached more weight to administrative ease and convenience than to the preponderant equity and justice contained herein. Its action is analogous to adhering to form but overlooking the substance of the thing.

Unless the decision of the lower court is reversed, IRS and other governmental agencies would harp and unduly emphasize about their own so-called "administrative exigencies" whenever an aggrieved citizen should seek justice from the courts. The status quo would then reign supreme.

In reality, behind all this talk about administrative difficulty there is little substance in it. The same kind of argument was used unsuccessfully in the *Blarek* case. Had there really been much substance and merit in such argument, the Commissioner would have appealed the case to a higher court after the 1955 Tax Court had ruled against him.

In truth, the Commissioner was on better footing in the *Blarek* case, 23 T.C. 1037, than he is in this instant matter. The market value for lodging could differ from house to house, from city to city, from state to state. But the market value of services rendered to invalid dependents would be uniform and same throughout the entire country. It would pose no problem to devise an

easy formula of determining its equivalent market value. The Petitioner has done so here.

It must be borne in mind, unlike the Respondent in 1957 who allowed the equivalent market value for "goods, services or other benefits" in the broadest sense to all, the Petitioner limits "services" only to *invalid* dependents. If the Respondent once deemed it advisable and feasible to allow "services" in unlimited sense to everyone, does it make sense now for him to oppose the use of services on a small scale only to the most deserving group of taxpayers?

Respondent allows personal services and household chores done on behalf of any normal and healthy person if paid for, but disallows similar services rendered to an invalid dependent. Does that makes sense? Such setup goes against the basic moral fiber of this or any other civilized country. When will our tax collectors show humane touch?

In the case of *Brehmer v. United States,* 191 F. Supp. 421, we find on page 424 this passage: "The treasury regulation, also, indicates that the statute is *not* to be given a narrow or restricted construction." In the same case on page 425 there is also this excerpt: "It is well-established law that where there is doubt or ambiguity in the interpretation of tax laws, such doubt or ambiguity shall be resolved in favor of the taxpayer."

This august Court has already pointed the right way in *Helvering (com.) v. Lazarus & Co.,* 308 U.S. 252, 255, with this statement: " * * * In the field of taxation, administrators of the laws and the courts are concerned with substance and realities, and formal written documents are not rigidly binding. Congress has specifically emphasized the equitable nature of proceedings before

the Board of Tax Appeals by requiring the Board to act in accordance with the rules of evidence applicable in courts of equity * * *."

With regard to actual expense incurred through direct monetary outlay as contended by the Respondent, this is what Judge Black said in *Melat v. Com.*, 12 T.C.M. 443, 445 (Commerce Clearing House): "The parties contend we must decide what is the proper basis for measuring the support given; whether it is actual cost as contended by respondent or market value of the maintenance furnished. As we see it, under the facts presented here, we need not decide this issue for whichever standard is used our holding is the same for each taxable year."

Same concept—same principle of equivalent market value—as above was used in the famous historic case of *Blarek,* 23 T.C. 1037, 1039. The 1955 Tax Court went on to say: "If this interpretation be contrary to the regulation, then the regulation must yield to our conclusion on the law as expressed herein."

Likewise, the same general principle was used by the Tax Court in *Haynes v. Com.,* 23 T.C. 1046. What the dependents received from the taxpayer must be measured by what the dependents would have to pay on the open market.

It lends strength and meaning to the conviction that Congress intended "support" to the dependent be used in its wider application when contemplated in the light of usage by states such as these:

Under necessaries for life, *kindness* and *personal care* and *attention* are included. "The agreement to support contemplates more than mere physical necessaries, it includes kindness, personal care and attention." *Zarembski v. Zarembski,* 48 N.E. 2d 394, 399, Illinois.

"The law will construe the contract to bind defendant to give such care and attention to plaintiff as her age and infirmities demanded for her comfort." *Patterson v. Patterson,* 47 N.W. 768, 769, Iowa.

The State of Colorado has even gone farther in making it a crime for husband not to provide "care" in addition to usual food, clothing and shelter for his sick wife. *Campbell v. People,* 42 Colo. 228.

As noted before, the support statute properly interpreted in line with the intention of Congress, would include in determining amount needed for the support of a given dependent, direct cash outlay and equivalent market value for necessaries received by the dependent. "Care" in form of services rendered to an *invalid* dependent is a necessary element of support. Such services had to be provided by the taxpayer or by others. The dependent could *not* care for herself.

In the light of continuing social reforms being recommended by the Executive Department and same being enacted by Congress, it is well to become aware of those prophetic words of the Honorable Chief Justice of this Court who as Governor of California said in 1951:

> A nation that abandons its social objectives is on the road to decadence. Within the limits of our financial means every social objective of the American people must be advanced not only to relieve undue hardship and to afford equal opportunity for the good life, but also to demonstrate to an observing and critical world that our governmental and economic systems can work hand in hand in the elimination of poverty, suffering and degradation.

This subject matter is a facet of those social objectives. However, unlike other facets, neither subsidy nor grant

is sought here. We seek relief from undue and unwarranted taxation. We also seek recognition in form of respect and compassion for the maimed and the afflicted, knowing such recognition would augment our prestige here and abroad, enhance the goodwill between people and government and redound to the credit of all those having a hand in its pronouncement.

The issue focuses to this point: This *Markarian* case is sufficiently different and distinguishable from the *Bartsch* case as to warrant different treatment. There the services were regarded ordinary by the Tax Court because the dependent was not an invalid. Moreover, she had no proof of disability. Here the services were necessary and vital because the dependent had been a chronic invalid of many, many years. Her dire plight was officially noted and so recognized by medical and judicial authorities. The physical or mental condition of the dependent is the deciding factor for anyone to be considered under the Invalid Test.

All-in-all, Your Honor, this case has enough peculiar and unprecedented merit and public interest as to clearly call for exercise of this Court's eminent power to review and decide accordingly.

Respectfully submitted as before,

Frank Markarian

FRANK MARKARIAN, *pro se*
636 Park Avenue
South Milwaukee
Wisconsin 53172